

August 9, 2023

**VIA ECF**

Honorable Taryn A. Merkl  
United States Magistrate Judge  
United States District Court, Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: *Bartlett v. Société Générale de Banque au Liban S.A.L.*, 19-cv-00007 - Defendants' Joint Response to Correct Misstatements in Plaintiffs' August 1 Reply (ECF 340)**

Dear Judge Merkl:

Defendants<sup>1</sup> respectfully submit this joint response for the limited purpose of correcting certain misstatements made by Plaintiffs in their August 1 reply, ECF 340.<sup>2</sup>

Plaintiffs' reply argues that their request to use transactional records produced in *Bartlett* in the *Stephens* and *Freeman* Actions does not require modification of the Protective Order ("PO") and therefore, is not governed by *Martindell v. Int'l Tel. & Tel. Corp.* 594 F.2d 291 (2d Cir. 1979) (placing high burden on party seeking to modify protective order in order to use discovery produced in one litigation in another case); *see* ECF 340 at 1, 2 (citing PO, ECF 272 ¶¶ C, K). Rather, they say, the PO already provides for the sharing of information across cases and that such provision "was negotiated-for by the parties." ECF 340 at 1 (citing PO, ECF 272 ¶ C).

Plaintiffs are wrong on the facts and the law: the plain language of the PO and Plaintiffs' own representations during the parties' negotiation of the applicable provision show that the PO must be *modified* in order for Plaintiffs to use the records produced in this case in the *Stephens* and *Freeman* Actions, and Plaintiffs cannot meet *Martindell*'s stringent requirement for doing so.

Paragraph C of the PO states that "a Party may move before the Court in this Litigation by letter motion to request permission to use Discovery material in another case or matter." ECF 272 at 3. Paragraph K, in turn, states that the PO "shall be binding upon the Parties" and "may be changed by further order of this Court, and without prejudice of the rights of a Party to move for relief from any of its provisions." *Id.* at 13. These provisions are not "independent" of one another as Plaintiffs contend. ECF 340. Paragraph C simply specifies the *procedural* mechanism by which a party could request a modification of the PO under Paragraph K.

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<sup>1</sup> Defendants are (1) Société Générale de Banque au Liban S.A.L., (2) Fransabank S.A.L., (3) MEAB Bank s.a.l., (4) BLOM Bank S.A.L., (5) Byblos Bank S.A.L., (6) Bank Audi S.A.L., (7) Bank of Beirut S.A.L., (8) LGB Bank s.a.l., (9) Banque Libano Française S.A.L., (10) Bank of Beirut and the Arab Countries S.A.L., and (11) Fenicia Bank S.A.L.

<sup>2</sup> The Court has discretion to consider Defendants' response. *Nearly v. Weichert*, 489 F. Supp. 3d 55, 62–63 (E.D.N.Y. 2020).

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Indeed, that is precisely how Plaintiffs' counsel justified the language in Paragraph C during the parties' negotiations. After Defendants initially struck the relevant language in Paragraph C from a draft of the PO—raising the same concerns articulated in Defendants' July 28, 2023 letter-brief in opposition (ECF 338)—Plaintiffs' counsel implored Defendants to reconsider in an April 6, 2022 email, explaining: “Virtually every protective order we have been involved in contains language ***noting that a party can move to modify the order.***” Exhibit A (emphasis added). Then, in a follow-up email on May 4, 2022, Plaintiffs' counsel expressed concern that omitting the language in question from Paragraph C would “foreclose the ***possibility*** of moving before the Court” to modify the PO’s general prohibition against the use of discovery materials outside of this case. *Id.* (emphasis in original).

Thus, far from a “negotiated-for” protocol for the use of *Bartlett* discovery materials in Plaintiffs' counsel's other cases (and for other clients) for any “good faith purpose” (ECF 340 at 1), Plaintiffs' own words make clear that Paragraph C merely reserves Plaintiffs' right to “move ***to modify***” the PO in order to allow for the use of discovery materials in other cases.

Having already represented that Paragraph C governs requests “to modify” the PO, Plaintiffs cannot now take the opposite position before this Court. And because Plaintiffs cannot meet the high burden of showing “improvidence in the grant of a Rule 26(c) protective order or some extraordinary circumstance or compelling need,” their request to modify the PO should be denied. *Martindell*, 594 F.2d at 296; *SEC v. TheStreet.com*, 273 F.3d 222, 230 (2d Cir. 2001); *AT & T Corp. v. Sprint Corp.*, 407 F.3d 560, 562 (2d Cir. 2005); *Iridium India Telecom Ltd. v. Motorola, Inc.*, 165 F. App'x 878, 880–81 (2d Cir. 2005).

Respectfully submitted,

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August 9, 2023  
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# EXHIBIT A

**Archived:** Tuesday, August 8, 2023 4:02:14 PM

**From:** [Ari Ungar](#)

**Mail received time:** Wed, 4 May 2022 19:23:08

**Sent:** Thu, 5 May 2022 00:22:44

**To:** [EXT david.lizmi@squirepb.com](#) [Aaron Schlanger Goldstein, Linda](#) [EXT Mitchell Berger](#) [EXT gassan.baloul@squirepb.com](#)  
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**Cc:** [Gary Osen](#) [Cindy Schlanger](#) [Michael Radine](#) [Dina Gielchinsky](#) [tab@turner.com](#)

**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

**Importance:** Normal

**Sensitivity:** None

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**\*\*EXTERNAL SENDER\*\***

David,

Thank you for your e-mail and Defendants' further proposed edits. We hope that we are close to reaching an agreement. To that end, we will agree to all of Defendants' additional proposed edits with the following exceptions:

#### Paragraph C

As stated in my April 6 e-mail, it is critical from our standpoint to retain the exact language we proposed:

"However, a Party may move before the Court in this Litigation by letter motion to request permission to use Discovery Material in another case or matter, and nothing herein waives any right a Party has to object to said motion."

While we recognize the importance of the protective order for bank customers that might potentially agree to waive Lebanese bank secrecy, we think the protective order's language sufficiently safeguards the confidentiality of any records Defendants may produce. We cannot stipulate to foreclose the *possibility* of moving before the Court because it is impossible to anticipate every potential scenario where relief of some kind might be required. Of course, nothing in the protective order prevents Defendants from raising customer waiver as an additional basis for objecting to such a request if it ever materializes.

#### Paragraph D2

Defendants added the language "and other sensitive personal information that may be subject to U.S. or foreign laws."

Plaintiffs propose a slight modification: "and other similar sensitive personal data that may be subject to U.S. or foreign laws." This tracks the language used above in this paragraph, and it hopefully obviates the need for a stand-alone definition of "sensitive personal information."

#### Paragraph E2

Finally, as previously indicated in my April 6 e-mail, we will agree to your removal of this paragraph, but only if the verbiage we proposed in Paragraph C is accepted.

Regards,

Ari Ungar  
Attorney at Law

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**From:** Lizmi, David <david.lizmi@squirepb.com>  
**Sent:** Sunday, May 1, 2022 8:44 PM  
**To:** Ari Ungar <aungar@osenlaw.com>; Aaron Schlanger <aschlanger@osenlaw.com>; Goldstein, Linda <Linda.Goldstein@dechert.com>; Berger, Mitchell <mitchell.berger@squirepb.com>; Baloul, Gassan A. <gassan.baloul@squirepb.com>; Alonzo, Joseph <joseph.alonzo@squirepb.com>; EXT jonathan.siegfried@dlapiper.com <jonathan.siegfried@dlapiper.com>; McGinley, Michael <Michael.McGinley@dechert.com>; Romeo, Justin M. <Justin.Romeo@dechert.com>; EXT Mark Hanchet <MHanchet@mayerbrown.com>; EXT RHamburg@mayerbrown.com <RHamburg@mayerbrown.com>; EXT Andrew Pincus <APincus@mayerbrown.com>; EXT Marc Cohen <mcohen@mayerbrown.com>; EXT alakatos@mayerbrown.com <alakatos@mayerbrown.com>; EXT choupt@mayerbrown.com <choupt@mayerbrown.com>; EXT HWeisburg@Shearman.com <HWeisburg@Shearman.com>; EXT Mike Sullivan <msullivan@ashcroftlawfirm.com>; EXT bleske@ashcroftlawfirm.com <bleske@ashcroftlawfirm.com>; Rivkin, David <drivkin@bakerlaw.com>; DeLaquil, Mark <mdelaquil@bakerlaw.com>; Foley, Elizabeth P. <efoley@bakerlaw.com>; EXT ccurran@whitecase.com <ccurran@whitecase.com>; EXT nerb@whitecase.com <nerb@whitecase.com>  
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**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good Evening Ari,

Please see the attached draft Protective Order, in consideration of Plaintiffs' proposed edits.

Thanks,

David

**From:** Ari Ungar <[aungar@osenlaw.com](mailto:aungar@osenlaw.com)>

**Sent:** Thursday, April 21, 2022 11:29 AM

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**Subject:** [EXT] RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Hi David,

Can you please provide your collective position on the open issues delineated below? Alternatively, if you prefer, the parties can submit their competing versions of the protective order to the Court.

Regards,

Ari Ungar  
Attorney at Law

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**From:** Ari Ungar

**Sent:** Wednesday, April 6, 2022 9:43 AM

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**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

David,

Thank you for sending us Defendant-Banks' proposed edits to the draft Protective Order, in track changes. There appear to be only a few outstanding issues to resolve, which we've delineated below with our proposals to resolve them:

Paragraph C - Defendants crossed out the language:

However, a Party may move before the Court in this Litigation by letter motion to request permission to use Discovery Material in another case, and nothing herein waives any right a Party has to object to said motion.

Virtually every protective order we have been involved in contains language noting that a party can move to modify the order. We ask that you reconsider your position. If the Defendant-Banks still insist on striking that language, we should just present the issue to the Court for resolution.

Paragraph E 2 - Defendants crossed out the language:

Nothing in this Protective Order shall prohibit any Party from providing Protected Information produced under the Order to U.S. federal or state law enforcement or regulatory agencies that address terrorism financing, money laundering, or other financial crimes-related issues in the event a Party believes that Protected Information produced under the Order indicates that a felony has been committed. At least five (5) business days prior to sharing such Protected Information with any such U.S. law enforcement or regulatory agency, the disclosing Party is required to notify the Party who originally produced the Protected Information.

Plaintiffs will agree to this deletion, but only if Defendant-Banks agree to our original language above for Paragraph C, extended to include "another case or matter." If that language remains objectionable to the Defendant-Banks, we will just add this to the list of issues to the Court for resolution.

Paragraph F 1 - Defendants crossed out the language "(except for grand jury subpoenas)." As a compromise, we propose substituting "(to the extent permitted by law.)"

Paragraph F 1 - Defendants crossed out the language giving a party 5 business days to notify other parties in writing and replaced it with a 24-hour deadline. In our view, that is an unrealistically short period of time for a variety of reasons, but we will agree to a 72-hour notification period.

Paragraph L - Plaintiffs generally agree to the proposed edits but propose a slight modification in the language at the end of the paragraph, to wit:

The parties shall include, in any pretrial order entered in this Litigation, ~~protocol their proposed exhibit lists, thereby~~ providing the Designating Party with sufficient advance notice of the Protected Information sought to be introduced at trial to permit the

Designating Party an opportunity to seek the relief contemplated by this provision.

Plaintiffs have no objections to the remaining proposed edits you provided.

Please let us know your collective position on the 5 open issues.

Regards,

Ari Ungar  
Attorney at Law

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**Sent:** Tuesday, March 29, 2022 5:32 PM

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**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Counsel,

Attached please find the Defendant-Banks' proposed edits to the draft Protective Order, in track changes.

Best,

David



**David J. Lizmi**

Principal

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**Subject:** [EXT] RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Counsel,

We previously wrote to you on February 16, February 25, and March 14 concerning Plaintiffs' proposed edits to the draft protective order that we sent you on February 7, but we have not received a substantive response.

If Defendants are unwilling to accept our proposed compromise language and formulate a joint response, we suggest that the parties submit their competing drafts to the Court and let Magistrate Judge Merkl make the final determination.

Please let us know you if you agree.

Aaron Schlanger  
Attorney at Law

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**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Linda,

Following up on your email below, do you have any update for us on Defendants' further comments and proposed changes to the draft protective order? Thanks in advance for your reply.

Aaron Schlanger  
Attorney at Law

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**From:** Goldstein, Linda <[Linda.Goldstein@dechert.com](mailto:Linda.Goldstein@dechert.com)>  
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**Subject:** Re: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Counselor, we are conferring amongst ourselves so we can send you our collective comments, which will be far more efficient. I note that we are not aware of any imminent document production and also that it took you two months to respond to our last comments on this document. Your patience would be appreciated.

Kind regards,

Linda

**Linda C. Goldstein**

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On Feb 25, 2022, at 3:36 PM, Aaron Schlanger <[aschlanger@osenlaw.com](mailto:aschlanger@osenlaw.com)> wrote:

✉

[EXTERNAL EMAIL]

Counsel,

When we can anticipate receiving your response with respect to the proposed edits to the draft protective order?

Regards,

Aaron Schlanger

Attorney at Law

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**Subject:** RE: Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Counsel,

I am following up regarding the proposed edits to the draft protective order that we sent last week to see when we can anticipate receiving your response.

Regards,

Aaron Schlanger  
Attorney at Law

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**From:** Aaron Schlanger  
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**Subject:** Bartlett v. Societe Generale de Banque au Liban , 19-cv-00007 (CBA)(TAM)

Counsel,

Attached are our further proposed edits to the Protective Order which attempt to address and take into consideration your December 7, 2021, comments to the prior draft. We have accepted many of your proposed edits and left a redline of what we believe to be either new language we're proposing or prior language we have reinstated. However, because of the volume of prior comments and edits, we recommend you run your own redline of the document against your own prior version. As discussed earlier, we think that it makes sense to leave the internal cross-referencing to subsections until all of the language has been agreed upon.

We look forward to your further views.

Regards,

Aaron Schlanger  
Attorney at Law

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